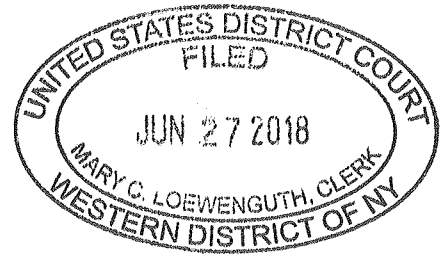


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



JORDAN HIDALGO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

11-CR-0151-A
18-CV-0366-A
ORDER

On April 25, 2018, the Court directed Petitioner to show cause why his 28 U.S.C. § 2255 motion should not be dismissed as untimely. See Docket No. 989 at 2-3. The Court instructed Petitioner to respond to the Court's order by May 31, 2018, and the Court warned Petitioner that failure to do so **"will result in the automatic dismissal of the motion to vacate as an abuse of the writ of habeas corpus."** *Id.* at 4 (emphasis in original).

Petitioner did not file a response by May 31, 2018. In light of Petitioner's *pro se* status, and to allow for any postal delays, the Court has waited several weeks before directing that this case be closed. As of the date of this Order, however, Petitioner has not responded to the Court's April 25, 2018 Order, nor has he requested an extension of time to do so. Thus, the Court concludes, for the reasons stated in its April 25, 2018 Order (Docket No. 989), that Petitioner's § 2255 motion is untimely. Petitioner's § 2255 motion (Docket No. 988) is therefore dismissed.


Pursuant to 28 U.S.C. § 2253(c)(1) and Rule 11(a) of the Rules Governing Section 2255 Proceedings, the Court declines to issue a certificate of appealability because "jurists of reason would [not] find it debatable whether the . . . [C]ourt was correct in its

procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Finally, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal taken from this decision would not be taken in good faith. Thus, leave to appeal *in forma pauperis* is denied. Petitioner is nonetheless advised that, should he decide to appeal this Order, “Federal Rule of Appellate Procedure 4(a) governs the time to appeal,” and “[a] timely notice of appeal must be filed even” though the Court declined to issue a certificate of appealability. Section 2255 Rule 11(b).

The Clerk of the Court shall take all steps necessary to close the parallel civil action, 18-CV-0366-A.

SO ORDERED.

Dated: June 26, 2018
Buffalo, New York


HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE